

**REMARKS**

Reconsideration and allowance of the subject application are respectfully requested. Claims 1-16 are pending in the present application, claims 1 and 7 being independent. Claims 1-4, 6-7, and 14-16 have been amended.

**Allowable Subject Matter**

Applicants appreciate the Examiner's indication that claims 7, 9, and 10-12 would be allowable if rewritten in independent form and to include all of the limitations of the base claim and any intervening claim. Claim 7 has been written in independent form while claims 9, and 10-12 depend therefrom. In view of the Examiner's indication, these claims should be allowable over the prior art of record.

**Drawing Substitution**

The drawings submitted 15 April 2002 have not been acknowledged or accepted by the Examiner. Applicants request that the Examiner indicate acceptance of the drawings submitted, a copy to the Official Draftsperson is attached herein.

**Prior Art Rejections****1. Rejection under 35 U.S.C. § 102 (b) and 35 U.S.C. § 103 (a) based on Salonaho**

Claims 1, 2, 4, 6, 8, and 13 stand rejected under 35 U.S.C. §102(b) as being anticipated by Salonaho et al. (WO 98/24199) and claims 3 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Salonaho. These rejections are respectfully traversed.

Salonaho et. al. (WO 98/24199) is related to a method and system for controlling a network load. When a subscriber terminal 11 transmits its own signal 12, or the desired signal, to the base station 10, the base station 10 receives the desired signal 12 and interference 13. The interference 13 interferes with detection of the desired signal. In order to improve the quality of the desired signal, the base station transmits a command to the subscriber terminal concerning a change of the data transmission rate (Salonaho, page 6, ll. 5-17).

More specifically, in Salonaho, a signal strength  $P_x$  of one or more desired signals is combined forming a total strength  $P_x+I$  of the desired signal and interference. A load result  $L$ , is compared with a threshold  $K_t$ . If  $L$  is greater than  $K_t$  then the data transmission rate of the desired signal can be decreased. If  $L$  is less than  $K_t$  then the data transmission rate of the desired signal can be increased, the decreasing and increasing resulting in a constant  $L$  value (Salonaho, page 6, ll. 21-35; page 7, ll. 1-8).

In claim 1 there is a “request for higher transmission” where the method includes “deciding whether to grant or deny the mobile station access to use the requested higher transmission rate...” In Salonaho the desired signal already exists. The mobile station has not sent a “request for higher transmission.” Salonaho is concerned with improving quality of the current desired signal. Thus, Salonaho fails to show, suggest, or teach an element of claim 1.

For anticipation under 35 U.S.C. § 102 “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. of California 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)(M.P.E.P. 2131).

To establish a *prima facie* case obviousness under 35 U.S.C. § 103, the Examiner has the burden of meeting the following three basic criteria: (1) the prior art must teach or suggest all of the claim limitations; (2) there must be a reasonable expectation of success; and (3) there must be some suggestion or motivation, either in the art or knowledge generally available to one of ordinary skill in the art to modify the reference or to combine teachings (M.P.E.P. § 2143)(emphasis added).

Applicants have already explained why Salonaho fails to show, teach, or suggest the invention of independent claim 1. Since claims 2-6, 8, and 13 each depend, either directly or indirectly, from claim 1, claims 2-6, 8, and 13 are

allowable at least for the reasons generally expressed above with respect to claim 1.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under 35 U.S.C. § 102 and 35 U.S.C. § 103 based on Salonaho.

2. Rejection under 35 U.S.C. § 103 (a) based on Salonaho in view of Kotzin

Claims 14, 15, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Salonaho as applied to claim 8 and further in view of Kotzin et al. (U.S. Patent No. 5,796,722). This rejection is respectfully traversed.

The Examiner alleges that Kotzin shows the features of claims 14, 15, and 16 missing from Salonaho (Office Action, page 5-6).

Kotzin is directed a system for mitigating the adverse affects of load imbalance by employing the use of handoff as a means for balancing the call traffic (Kotzin, Abstract; col. 2, ll. 59-62). Kotzin fails to show, suggest, or teach a method where a "request for higher transmission" includes "deciding whether to grant or deny the mobile station access to use the requested higher transmission rate..." In Kotzin a subscriber attempts to access the communication system and is denied access if there is no carrier available (Kotzin, Figure 2).

Applicants have already explained that Salonaho fails to teach or suggest these limitations of independent claim 1. Therefore, Salonaho in view of Kotzin cannot render claim 1 obvious to one skilled in the art. Because claims 14, 15,

and 16 each depend, either directly from claim 1, claims 14-16 are allowable at least for the reasons generally expressed above with respect to claim 1.

Accordingly Applicants respectfully request reconsideration and withdrawal of the outstanding rejection of claims 14, 15, and 16 under 35 U.S.C § 103(a).

**CONCLUSION**

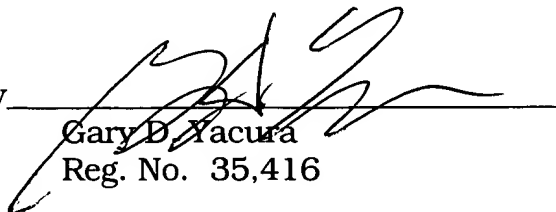
In view of the above amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the formal objections and rejections to the claims, and the rejections based on prior art. Because all claims are believed to define over prior art of record, Applicants respectfully request an early indication of allowability.

If the Examiner has any questions concerning this application, the Examiner is requested to contact the undersigned at (703) 668-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayments to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Very truly yours,

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